

Local Planning Appeal Tribunal
Tribunal d'appel de l'aménagement
local



ISSUE DATE: October 03, 2019

CASE NO(S): MM180059
PL180588

The Ontario Municipal Board (the "OMB") is continued under the name Local Planning Appeal Tribunal (the "Tribunal"), and any reference to the Ontario Municipal Board or Board in any publication of the Tribunal is deemed to be a reference to the Tribunal.

PROCEEDING COMMENCED UNDER subsection 85(1) of the *Funeral, Burial and Cremation Services Act*, 2002, S.O. 2002, c.33

Applicant and Appellant: The Roman Catholic Episcopal Corporation of the Diocese London in Ontario
Subject: To permit the establishment of a cemetery, mausoleum and columbarium
Municipality: Town of Lakeshore
Property Address/Description: 494/496 Elmstead Road (County Road 21)
LPAT Case No.: MM180059
LPAT File No.: MM180059
LPAT Case Name: The Roman Catholic Episcopal Corporation of the Diocese London in Ontario v. Lakeshore (Town)

PROCEEDING COMMENCED UNDER subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant: The Roman Catholic Episcopal Corporation of the Diocese London in Ontario
Subject: Request to amend the Official Plan – Failure of the Town of Lakeshore to adopt the requested amendment
Existing Designation: "Recreational Commercial", "Residential", and "Agricultural"
Proposed Designation: "Major Institutional"
Purpose: To permit a Cemetery Use
Property Address/Description: 494/496 Elmstead Road (County Road 21)
Municipality: Town of Lakeshore
Municipality File No.: OPA-1-2018

LPAT Case No.: PL180588
 LPAT File No.: PL180588
 LPAT Case Name: The Roman Catholic Episcopal Corporation of the
 Diocese London in Ontario v. Lakeshore (Town)

PROCEEDING COMMENCED UNDER subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant: The Roman Catholic Episcopal Corporation of the
 Diocese London in Ontario
 Subject: Application amend Zoning By-law No. 44-2018 -
 Refusal of Application by Town of Lakeshore
 Existing Zoning: "P, Parks and Open Space", "P-3, Parks and Open
 Space Exception 3" and "R1, Residential – Low
 Density"
 Proposed Zoning: "I1-4(h2), Major Institutional Exception 4 in holding"
 and "EP, Environmental Protection"
 Purpose: To permit only the use of a cemetery, mausoleum
 and columbarium use, and uses accessory to the
 main use, but will not permit a crematorium, in
 addition to protecting the floodway
 Property Address/Description: 494/496 Elmstead Road (County Road 21)
 Municipality: Town of Lakeshore
 Municipality File No.: ZBA-4-2018
 LPAT Case No.: PL180588
 LPAT File No.: PL180589

Heard: August 20, 2019 in Lakeshore, Ontario

APPEARANCES:

Parties

Roman Catholic Episcopal
 Corporation of the Diocese of
 London

Town of Lakeshore

Counsel

P. Foran

J. Renick

DECISION DELIVERED BY C.J. BRYSON AND ORDER OF THE TRIBUNAL

BACKGROUND

[1] This was a hearing of the Tribunal concerning an appeal filed by the Roman Catholic Episcopal Corporation of the Diocese of London in Ontario (the “Diocese”), under s. 85(1) of the *Funeral, Burial and Cremation Services Act*, 2002, S.O. 2002, c.33, as amended (the “FBCSA”) and related appeals filed by the Diocese under s. 22(7) and 34(11) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended (“*Planning Act*”).

[2] The Diocese proposes to establish a cemetery on the former Hydeaway Golf Course, located at 494/496 Elmstead Road (“Subject Lands”), in the Town of Lakeshore (“Lakeshore”). The golf course closed in 2014 and the proposed cemetery would incorporate parts of existing parking areas, some buildings (for maintenance purposes) and some existing mature landscaping while adding significant buffers and landscaping to provide privacy for users and neighbouring property owners. Lakeshore refused the FBCSA and official plan and zoning by-law amendment approvals required for the proposed development.

[3] Prior to the hearing of the scheduled FBCSA appeal, the Tribunal was advised by the parties that they had entered into Minutes of Settlement for the three appeals, had agreed upon a draft official plan amendment and zoning by-law amendment and that they wished to convert the scheduled FBCSA appeal hearing into a settlement hearing for the three related appeals. The request was approved and counsel for the Diocese provided advance notice to the participants in the FBCSA appeal of the nature of the combined appeals settlement hearing.

[4] The Tribunal was provided with the Affidavit of Richard Zelinka, sworn August 9, 2019 and filed as Exhibit 1 at the hearing, which opined that the draft official plan amendment and zoning by-law amendment are consistent with the Provincial Policy Statement, 2014 (“PPS”), conform with the County of Essex Official Plan (“COP”),

conform with the Town of Lakeshore Official Plan (“LOP”) as applicable, and that the FBCSA application met the applicable test of whether the proposed cemetery is in the public interest. Mr. Zelinka appeared at the hearing and was qualified by the Tribunal without objection to provide it with expert land use planning opinion evidence in support of the proposal.

[5] Four participants appeared at the hearing: Anitra Escoto, Catherine McLennan, Dan Ruggaber and Lonnie Scott. The participants are nearby landowners and residents. They shared concerns regarding traffic, loss of views, daily reminders of death, grief and sadness, loss in property value and noise.

[6] On the basis of the planning opinion evidence and the submissions of the parties and participants, the Tribunal issued an oral order at the hearing, which allowed the *Planning Act* appeals and approved the draft official plan amendment and zoning by-law amendment, which formed part of Exhibit 2 entered at the hearing and which are attached to this Decision as Attachment 1 and 2 respectively.

[7] The Tribunal is now satisfied upon the planning evidence and further submissions of the parties and participants that the appeal pursuant to the FBCSA should also be allowed and the required approval thereunder be granted in the public interest.

ANALYSIS

[8] The Subject Lands are in a rural area, which hosts a mix of residential, commercial and industrial uses. They are designated Agricultural under the COP, despite their legal non-conforming use as a golf course until 2014. The lands have not been used for agricultural purposes since the 1965. The Subject Lands are designated Recreational Commercial, Residential and Agricultural under the LOP. Both the COP and LOP however contain policies regarding legal non-conforming uses, which allow for

zoning to maintain those or similarly compatible uses when vacant buildings of a commercial or industrial nature are to be re-used and in the case that the prior legal non-conforming use has ceased.

[9] The proposed cemetery development would incorporate existing buildings and infrastructure of the prior golf course for maintenance, office space and parking. On this basis, Mr. Zelinka opined that no COP amendment is required and an amendment to the LOP is only required to change the designation from Recreational Commercial, Residential and Agricultural to Major Institutional to allow for the sole use of the Subject Lands as a cemetery.

[10] An amendment is then required to Lakeshore Zoning By-law No. 2-2012 ("ZB"), to rezone the Subject Lands from Parks and Open Space Zone Exception 3, and R1, Residential – Low Density zone to the Major Institutional Zone Exception 4 in holding and EP-2, Environmental Protection Zone exception 2, to allow for the cemetery, columbarium and mausoleum uses and to prohibit any development in the floodway of Pike Creek, which is to be determined in consultation with the Essex County Conservation Authority. The ZB amendment will also provide for a holding provision regarding a required site plan agreement inclusive of a phasing and landscape plan, confirmation of berming and tree screening along the entry and portions of the cemetery border in the first phase of the development, confirmation of the location of the flat ground marker area of the cemetery toward the westerly portion of the Subject Lands and neighbouring residences, confirmation of a further distance from the neighbouring residents for in ground burial plots, and other required studies or plans identified by Lakeshore. Finally, the ZB amendment will allow for the cemetery use in the Major Institutional zone.

[11] Mr. Zelinka opined s. 1.1.1 of the PPS directs municipalities to plan for institutional uses, specifically including cemeteries. The proposal is for a cemetery that will last 80-100 years and be open to the residents of Lakeshore and the County as a

whole. He testified that currently available Heavenly Rest cemetery is soon reaching capacity, making development of a new cemetery necessary in the public interest. In his analysis, there are no other lands in the County that are available and amendable to development of a new cemetery.

[12] Mr. Zelinka continued that the cemetery development is further consistent with the PPS for directing efficient land use without the need of new infrastructure or services. The proposal will re-use golf course land, buildings and infrastructure and better protect natural heritage resources, which will be studied and addressed in the site plan approval process. He noted the Essex Region Conservation Authority supports the proposal, which engages Pike Creek and other natural features of interest. The proposed ZB amendment puts that portion of the Subject Lands into an environmental protection zone, which will be protected from any development and will contribute to the County and Lakeshore trail systems for passive recreation use.

[13] Mr. Zelinka also opined the proposal is consistent with PPS agricultural land policies, for the Subject Lands do not host specialty crops and are no longer prime agricultural lands after their long-standing legal non-conforming use as a golf course. He notes the COP predates the PPS 2014, so its designation is not reflective of the prior use of the lands or indicative of current PPS agricultural lands policy. As noted above, both the COP and LOP acknowledge legal non-conforming uses and the ability to modify those non-agricultural uses without violating the COP. The LOP amendment along with the ZB amendment will define the permitted exceptions to the agricultural use as permitted by s. 4.1.6 of the COP.

[14] Regarding the concerns of traffic, Mr. Zelinka highlighted that the development is consistent with PPS, COP and LOP transportation policies. The Subject Lands are accessed through higher order County roads, which are designed to accommodate larger volumes of traffic. He pointed to the traffic impact study prepared by RC Spencer Associates for the proposal, which finds the cemetery use will produce less of a traffic

impact than the prior golf course use and poses no adverse impacts on nearby residents. He also noted that the immediately adjacent Elmstead Road, which is a County road, connects to County Road 42 to the south, which is a major County road servicing the region. The County expressed no concerns regarding traffic on its roads when circulated with the applications. Finally, Mr. Zelinka notes the long, bermed and tree-lined entranceway to the site will protect residents from processions and visitors being backed up along Elmstead Road.

[15] In regard to noise concerns, Mr. Zelinka pointed to the acoustical engineering study produced by HGC Engineering for purposes of the proposal. It finds no potential adverse noise impact upon nearby residents arising from the planned cemetery use. He opined upon that basis that the cemetery will produce no more noise than the prior golf course use.

[16] While views for nearby residents will be changed by the proposed cemetery, Mr. Zelinka highlighted that the long entrance way as well as portions of the lot line abutting nearby residential properties will be bermed and planted with mature trees. The nearby residents, including the participants, will not have views of the users and visitors entering the cemetery, maintenance or services within the cemetery or grave stones, which will be further removed from the nearby residential lots by placement of only flat grave markers in the immediately adjacent area, behind the planned tree line. Mr. Zelinka also provided evidence of other area cemeteries, which abut residential properties without any such screening being put in place.

[17] Finally, Mr. Zelinka spoke to the assertion of declining property values and that such claims are not considered planning grounds for denial of a proposed development. The Tribunal agrees with this opinion, for it has repeatedly held allegations of declining property value due to proposed development are not a planning consideration. Further, in absence of formal land evaluations of the participant properties in view of the proposal, the Tribunal is not satisfied that property values will decline as a result of the

development. As demonstrated by Mr. Zelinka, there are similar situations which increase desirability of residential use and property values due to the long-term certainty of the surrounding land use.

[18] Upon the evidence provided and the submissions of the parties and participants regarding consistency of the proposed cemetery with the PPS and its conformity with the COP and LOP, as applicable, the Tribunal approved the OP and ZB amendments attached to this Decision as Attachment 1 and 2 respectively. Upon the same evidence and submissions, as well as the uncontested evidence of need for the new cemetery, the Tribunal now finds the proposal also meets the public interest test in the FBCSA and authorizes the required approval thereunder.

[19] While the Tribunal understands the concerns of the nearby residents, there is no substantiating evidence of undue adverse view, noise or traffic impacts arising from the development of the Subject Lands for a cemetery. And, the subjective views regarding loss of property value and personal dislike of cemeteries are not grounds upon which the Tribunal can refuse the requested approvals. The cemetery is a needed public service and the proposal represents good planning, and the public interest for FBCSA purposes.

ORDER

[20] The draft Official Plan Amendment Number 14, attached to this Decision and Order as Attachment 1, is approved pursuant to s. 22(11.0.10) of the *Planning Act*,

[21] The draft Zoning By-law Amendment, attached to this Decision and Order as Attachment 2, is approved pursuant to s. 34(26.3) of the *Planning Act*,

[22] Consent is granted to the establishment of a cemetery at 494/496 Elmstead Road pursuant to s. 85(3) of the FBCSA; and

[23] The Tribunal may be spoken to if problems should arise in the implementation of this Decision and Order. This Member remains seized for this purpose.

“C.J. Bryson”

C.J. BRYSON
MEMBER

If there is an attachment referred to in this document,
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Local Planning Appeal Tribunal

A constituent tribunal of Tribunals Ontario - Environment and Land Division
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